



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-1

### State Police Officer's Outside Employment

The Ethics Commission has been asked whether a State Police officer may engage in the amusement arcade/video games/vending machine business, in various capacities from employee to owner, without encountering problems under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

In Advisory Opinion Number 83-11, 45 Conn. L.J. No. 23, p. 13C (December 6, 1983), the Ethics Commission discussed in some detail two considerations which distinguish application of the Code of Ethics to private employment of a State Police officer from its application to the case of most State employees. First is the fact that Division of State Police Rules and Regulations require a State Police officer to perform statutory police duties whether on or off duty; failure to do so constitutes neglect of duty and can be the subject of disciplinary action. That is to say, a State Police officer, not on duty, seeing the law being broken must take appropriate police action. Secondly, a law enforcement agency cannot be effective unless the public believes that its members are for the most part honest and upright individuals. The State Police Division endeavors to foster a reputation for rectitude by, among other things, limiting outside employment. The directive attempting this, HQ Special Order 35-A, June 24, 1974, imposes general conditions and restrictions, establishes some criteria governing outside employment, and prohibits any outside employment which has not been approved by the chain of command.

There are several Code provisions which must be considered when any State employee contemplates private employment, to determine whether there are conflicts between the power and duties of the State position and the outside activity. A State employee may not accept employment which will impair his independence of judgment with regard to his State duties, or require or induce him to disclose confidential information gained in State service. Subsection 1-84(b), General Statutes. No State employee may knowingly disclose, for financial gain, confidential information gained in State service or use such confidential information, or his State position, for the financial gain of himself, his immediate family, or a "business with which he is associated" (subsection 1-79(a), General Statutes). Subsection 1-84(c), *id.* With the exception noted in section 1-85, no State employee shall have any financial interest in, or engage in, any business,

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employment, transaction, or professional activity if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Subsection 1-84(a), 1-85, General Statutes. A State employee, such as a State Police officer, who is not a member of a regulatory agency or legislative body and who is required to take official action which will affect a significant financial interest of his, a member of his immediate family, or a business with which he is associated must arrange with his immediate superior to have the matter turned over to someone else. Section 1-86, id.

Application of these Code provisions to outside employment will differ depending upon whether a State Police officer wishes to distribute vending machines, video games, or be involved in some capacity in operating an amusement arcade. Results depend in part on the opportunity, or temptation, for a State Police officer to "use his badge" -- that is, his State position -- improperly in his private employment. Additionally to be considered is the likelihood that local police will be more reluctant to take proper action against a State Police officer for violations of the law which occur in his business than if the business involved a person who is not another law enforcement officer.

The vending machine business, rightly or wrongly, has an unsavory reputation. It is said that organized crime and other criminal elements dominate it, or at least a substantial portion of it. If the Ethics Commission's understanding of the public perception of the vending machine industry is correct, it makes little difference whether the reputation is deserved or not. If a State Police officer were known to have entered and stayed in the vending machine business, the public would have to assume he was working with criminal elements and, at the least, overlooking violations of the law. He might be suspected even of having to join in criminal conduct in order to stay in business. There would appear to be multiple conflicts between his duty as a State servant to enforce the law and his personal interest in improving or maintaining his private finances. When members of a law enforcement agency are concerned, the appearance of a conflict of interest can be as devastating to public confidence in the integrity of public safety operations as an actual conflict of interest. Unless there is no hint of infiltration of the vending machine business by criminal elements, a State Police officer should not be known to be involved with a firm engaged wholly or in part in it. The public would conclude that his official actions were controlled by the impact they had on his personal finances or the finances of a business with which he was

associated, a violation of the Code of Ethics, and that he had accepted employment which impaired his independence of judgment as to his official duties, another violation. The provisions of section 1-86, General Statutes, allowing a State employee to have official action, which he normally would be required to take, transferred to another do not seem to afford a method of avoiding the conflicts of interests which appear inherent in the situation under discussion.

If the public is not aware of the participation of the State Police officer in a vending machine business -- for example, it is a "business with which he is associated" because, unknown to the public, he owns five percent or more of the business' stock -- there would be the problems under the Code mentioned above only if the State Police know that vending machine operations are in fact infiltrated by criminal elements. Another consideration would be that "protection" -- sometimes a threat that a business establishment or its personnel will be harmed if a criminal's business proposition is refused and sometimes an offer to guard against activities of other criminals -- can be a feature of criminal business operations. A State Police officer would be in a position to claim that the resources of the State Police Division were available to him; consequently, he could offer better protection. Violation of, and temptation to violate, Code provisions, particularly subsections 1-84(b) and 1-84(c), above, could be avoided by the State Police denying the officer's application to get into the vending machine business in any capacity.

Provision of video games as a business has the same character as provision of vending machines. Therefore, it would seem vulnerable to infiltration by criminal elements. However, it has not been, so far as the Ethics Commission is aware. Unless the State Police know differently, there seems to be no reason, insofar as the Code of Ethics is concerned, that a State Police officer should not serve in any capacity in a reputable business furnishing video games to those who want them on their premises provided the officer avoids supplying games to establishments which serve alcoholic beverages. The close State control over the sale of liquor is enforced in part by the State Police. If among his customers were bars, package stores, etc., there would inevitably be conflicts of interests caused by the officer's duty to take appropriate action whenever he saw a breach of the law and his natural concern not to alienate those customers. Further, he could use information gained from within the Division to forewarn customers of impending enforcement actions.

Amusement arcades are likely to experience the problems to be expected considering the youth of those who tend to frequent them -- drug use, under-age drinking, breaches of the peace such as fighting, etc. If open during school hours, they can tempt some away from school. Some games can be modified to permit gambling. One would think that having involved in the operation of an amusement arcade a State Police officer in whose honesty the Division has complete confidence would be one of the best ways to ensure compliance with all Federal and State laws and municipal ordinances. If no illegal activities such as those mentioned above occur in or near the amusement arcade, as in the case of furnishing video games to a limited clientele there appear to be no inherent, unavoidable conflicts of interest or other types of violations of the Code of Ethics for the Code to prevent a State Police officer from accepting involvement in some capacity in an amusement arcade.

In summary, a State Police officer should not be known to participate in any capacity in a business which is understood by the public to have significant involvement by criminal elements or to be the locus of criminal activity. The apparent violations of Code provisions would weaken the public's confidence in the State Police Division. If the State Police are aware of criminal involvement in an activity related to a particular type of private business, they should deny a State Police officer's request to enter it, because of the potential for Code violations. Approval of a State Police officer's request to engage in outside employment may have to be conditioned upon his agreeing to restrictions on his private activity in order to avoid conflicts of interest, real or apparent.

The opinion of the Ethics Commission as to whether a State Police officer should be permitted to engage in outside employment considers only the Code of Ethics, not other administrative or personnel issues which the Department itself must take into account when it reviews an application for outside employment.

By order of the Commission,

  
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Lucille E. Brown

Date 5 January 1984